

Notice of Allowability

Application No.

10/826,186

Examiner

JAVIER G. BLANCO

Applicant(s)

SUTTON ET AL.

Art Unit

3774

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Response/Amendment filed on June 26, 2008.
2. ☒ The allowed claim(s) is/are 1, 3, 4, and 13-19.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date ____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 9/2/2008.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other ____.

/Javier G. Blanco/
Examiner, Art Unit 3774

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 26, 2008 has been entered.

Examiner's Amendment

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Attorney Thomas M. DiMauro on September 2, 2008. The application has been amended as follows:

Claim 1 (Currently Amended) A prosthetic endplate in an intervertebral motion disc having an anterior end and a posterior end, the endplate comprising:

- i) an outer plate comprising an outer surface adapted for fixation to a first vertebral body, an inner surface, and a body portion therebetween,

ii) an inner plate comprising an outer surface having a first articulation surface, an inner surface, and a body portion therebetween,

iii) means for selectively adjusting a relative position of the inner plate upon the outer plate,

wherein the means for selectively adjusting a relative position is disposed upon the inner surfaces and comprises an elongated channel and an elongated projection adapted to mate with the elongated channel,

wherein the elongated projection comprises a threaded throughhole running in the direction of the elongation,

wherein the means for selectively adjusting a relative position further comprises a captured screw disposed within the throughhole, the screw having an elongated shaft and a threadform thereon, the threadform being complimentary to the threaded throughhole,

wherein the elongated channel comprises means for capturing the screw,

wherein the screw comprises a blunt distal tip, and a proximal head having a slot, the elongated shaft comprising a recess adapted for reception of a locking clip,

a locking clip received in the recess of the elongated shaft,

wherein the means for capturing the screw comprises an anterior recess and a posterior recess defined by necks in the elongated channel, wherein the blunt distal tip and the proximal head of the screw are respectively seated in the anterior recess and the posterior recess to render the screw captured and spatially fixed save rotation,

wherein said selectively adjusting a relative position of the inner plate upon the outer plate comprises radially translating the inner plate relative to the outer plate.

Claims 9-11 have been cancelled.

Claim 14 (Currently Amended) The endplate of claim 5 1 wherein the screw further comprises a magnetic portion.

3. Claims 1, 3, 4, 13, 15, 16, and 19 are allowable. The restriction requirement as set forth in the Office action mailed on January 11, 2007, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claims 14, 17, and 18, directed to species previously withdrawn from further consideration, require all the limitations of an allowable generic linking claim as required by 37 CFR 1.141.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Reasons for Allowance

4. The following is an examiner's statement of reasons for allowance: the Prior Art does not teach or disclose a prosthetic endplate comprising, e.g., an outer plate, an inner plate, and means

for selectively adjusting a relative position the inner plate upon the outer plate, wherein the means for selectively adjusting a relative position is disposed upon the inner surfaces and comprises an elongated channel, an elongated projection adapted to mate with the elongated channel, and a captured screw disposed within a threaded throughhole of the elongated projection, wherein said selectively adjusting a relative position of the inner plate upon the outer plate comprises radially translating the inner plate relative to the outer plate.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 571-272-4747. The examiner can normally be reached on M-F (9:00 a.m.-7:00 p.m.), first Friday of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on (571)272-4749. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300 for regular communications and After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Javier G. Blanco/

Examiner, Art Unit 3774

/Dave Willse/

Primary Examiner, Art Unit 3738